

REMARKS

Reconsideration of the rejections set forth in the Office Action mailed December 23, 2004, is respectfully requested. Claims 1, 4, 10, and 13 have been amended. Support for these amendments can be found in the specification at, e.g., Figs. 1A-C, page 4, lines 1-18, and page 8, line 18 – page 9, line 13. Therefore, no new matter was added with these amendments. Claims 1-20 remain pending in this application.

Art Rejections

Claims 1-2, 4-5, 7, 10-11, 13-14, 16, and 19-20 were rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Macoviak et al. (USP 6,139,517). Claims 3, 6, 12, and 15, were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Macoviak et al. and further in view of Don Michael (USP 5,176,638). Claims 8 and 17 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Macoviak et al. and further in view of Aillon (USP 4,601,706). Claims 9 and 18 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Macoviak et al. and further in view of Avellanet (USP 5,613,948).

Applicant respectfully asserts that Macoviak does not teach or suggest a device or method containing all of the limitations of the claims as amended. The examiner has taken the position that the opening between the expansion members 244 and 258 and the central tubular wall 242 form a port. Independent claims 1 and 10 have been amended to require an aortic shunt with “*an expandable chamber mounted on the first tubular member extending from a proximal end to a distal end, wherein the proximal end is located proximal the proximal end of the port and the distal end is located distal the distal end of the port.*” Macoviak does not teach or suggest a device with an expandable chamber with these characteristics.

Claims 1 and 10 are therefore patentably distinct from the cited art. Claims 2-9 and 11-20 are dependent on claims 1 and 10, respectively, and are therefore patentably distinct from the cited art for the same reasons. Therefore, Applicant respectfully requests withdrawal of the rejections and reconsideration of the claims as amended

For all the foregoing reasons, Applicant asserts the claims are in condition for allowance. Favorable action on the merits of the claims is therefore earnestly solicited. If any issues remain, please contact Applicant's undersigned representative at (949) 737-2900. The Commissioner is hereby authorized to charge any additional fees that may be required to Deposit Account No. 50-2862.

Respectfully submitted,
O'MELVENY & MYERS LLP

Dated: February 23, 2005

By: Diane K. Wong
Diane K. Wong
Reg. No. 54,550
Attorneys for Applicants

JCK/DKW/cp

O'Melveny & Myers LLP
114 Pacifica, Suite 100
Irvine, CA 92618-3315
(949) 737-2900